



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CCO/147572

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 13, 2013, under Wis. Admin. Code § HA 3.03, to review a decision by the Kenosha County Human Service Department in regard to Child Care Benefits (CCB), a hearing was held on April 18, 2013, at Kenosha, Wisconsin.

The issue for determination is whether the agency has established an overpayment of CCB against the petitioner because petitioner was over the income limit from April 1, 2012-December 31, 2012.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Children and Families  
201 East Washington Avenue  
Madison, Wisconsin 53703

By: Karen Mayer and Matthew Leys  
Kenosha County Human Service Department  
8600 Sheridan Road  
Kenosha, WI 53143

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. Petitioner received child care benefits while she was working from April to December 2012. Petitioner is considered a household of 2 for CCB purposes.
3. On December 5, 2012 the agency received an alert that an IRS wage match showed a discrepancy between what the agency had been budgeting for petitioner's income, and what was being reported to the IRS.
4. By notice dated January 30, 2013 the agency informed petitioner that she was overpaid \$5288.41 (claim # [REDACTED]) in CCB. The notice itself states the overpayment period runs from June 1, 2012 to December 31, 2012 because of client error in not reporting the earned income. The worksheet attached to the notice shows that the overpayment period was calculated from April 1, 2012 to December 31, 2012.

### DISCUSSION

County, tribal and W-2 agencies are responsible for preventing and correcting improper child care payments, establishing and collecting overpayments, and determining which clients and providers shall be referred for overpayment to the fraud investigation provider, and/or to the District Attorney's office for criminal prosecution. These responsibilities encompass eligibility, authorizations, attendance reporting, and all other activities related to the expenditure of Wisconsin Shares benefits.

Wisconsin Statute §49.195(3), requires county agencies to try to recover all overpayments made under Wis. Stat. §49.155, the statute authorizing subsidized child care, regardless of who was at fault. See Wis. Stat. § 49.195(3). This means that even if the agency caused the overpayment, the petitioner will still be "on the hook" for it because s/he received more benefits than s/he was eligible to receive. Therefore, the agency must determine whether an overpayment has been made and, if so, the amount of the overpayment and take all reasonable steps necessary to recover it. Wis. Stat. §49.195(3); Wis. Admin. Code §DCF 101.23(2); See also, *Wisconsin Shares Child Care Assistance Manual*, Ch. 2., available online at <http://dcf.wisconsin.gov/childcare/wishares/>.

In this case, the county established the overpayment at issue because it received an alert that petitioner's earned income had not been accurately entered as opposed to what the IRS was reporting. The maximum income for any family to remain eligible for Wisconsin Shares child care assistance is 200% FPL. Financial eligibility criteria is no longer met when a family's income exceeds 200% FPL. See *Manual* at §1.6.3. 200% of the FPL in 2012 for a household of two was \$2522. Persons receiving Wisconsin Shares child care assistance must report any changes in circumstances that may affect his or her eligibility to the child care administrative agency within 10 days of the change. See *Manual* at §1.15.1. Parents are required to report a change in monthly income if gross income goes above 200% of FPL.

The agency evidence shows that the petitioner had gross income in the overpayment period exceeding the 200% FPL. This was done with the State Wage Record, the Notice, and the Worksheets showing how the overpayments were calculated. See Exhibits 1, 4 and 6. The agency used a pro-rata average to establish gross monthly income for each of the months in the test periods derived from the gross quarterly wages recorded in the State Wage Record, with each quarter divided by 3 months. Using this method, her income was in excess of the limit in every month found by the agency.

The petitioner challenged the averaging of income and provided her paystubs as evidence of her actual income. See Exhibit 2. Her gross pay for April was \$2445.18, which is below the income limit. Her gross pay for May was \$2598.92. Even if it is over by \$76, it is over the limit. Thus, it would have been at the end of May (paydate was 5/31), or early June for her to have been required to notify the agency of

her gross income above the 200% FPL within the 10-day timeframe. If she had reported her income increase, the agency would have had to act on that within 10 days of receiving that change report and to send a 10-day notice to the petitioner ending the authorization. To that extent, I will remand the matter for the agency to rescind the current overpayment for April, May, and June. I must uphold the county's determination that it found an overpayment from July -December, 2012 as she was over the income limit.

### **CONCLUSIONS OF LAW**

The agency has established an overpayment of child care funds against the petitioner because petitioner was over the income limit from July –December, 2012.

**THEREFORE, it is**

### **ORDERED**

That the matter be remanded to the agency with instructions to rescind the overpayment for April, May, and June, on claim no. [REDACTED] against petitioner. The agency shall take the action within 10 days of this decision. In all other respects, the petition for review herein is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

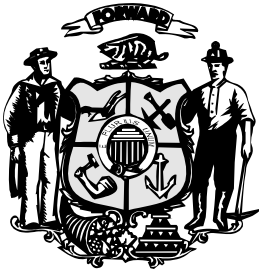
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 15th day of May, 2013

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\sKelly Cochrane  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on May 15, 2013.

Kenosha County Human Service Department  
Public Assistance Collection Unit  
Child Care Fraud